

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Recardo Millwood)	File No: EB-10-NY-0486
)	NAL/Acct. No: 201132380005
Bronx, New York)	FRN: 0020635678
)	

FORFEITURE ORDER

Adopted: February 22, 2013

Released: February 22, 2013

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Recardo Millwood for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act).¹ The noted violations involved Mr. Millwood's operation of an unlicensed radio transmitter on the frequency 88.9 MHz in Bronx, New York.

II. BACKGROUND

2. On May 12, 2011, the Enforcement Bureau's New York Office issued a Notice of Apparent Liability for Forfeiture (NAL)² to Mr. Millwood for operating an unlicensed radio station. In response to the NAL, Mr. Millwood admits to, and apologizes for, the violations, but nonetheless requests cancellation of the proposed \$20,000 forfeiture because of his inability to pay.³

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Commission's rules (Rules),⁵ and the *Forfeiture Policy Statement*.⁶ In examining Mr. Millwood's response, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as

¹ 47 U.S.C. § 301.

² *Recardo Millwood*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 6774 (Enf. Bur. 2011). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

³ Letter from Recardo Millwood to New York Office, Northeast Region, Enforcement Bureau (June 10, 2011) (on file in EB-10-NY-0486) (NAL Response).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

justice may require.⁷ As discussed below, we have considered Mr. Millwood's response in light of these statutory factors, and find that a reduction of the forfeiture is warranted based solely on his inability to pay claim.

4. We affirm the *NAL*'s finding that Mr. Millwood violated Section 301 of the Act.⁸ Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in accordance with the Act and with a license granted under the provisions of the Act.⁹ As reflected in the *NAL*, Mr. Millwood admitted to operating an unlicensed radio station on the frequency 88.9 MHz from 3870 White Plains Road in Bronx, New York, on October 6, 14, and 29, 2010, and on November 3, 2010.¹⁰ Because Mr. Millwood does not dispute the factual findings in the *NAL*, we conclude that Mr. Millwood willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

5. In response to the *NAL*, Mr. Millwood nonetheless requests cancellation of the \$20,000 forfeiture based on his inability to pay.¹¹ With regard to an individual or entity's inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.¹² Based on the financial documents provided by Mr. Millwood, we find sufficient basis to reduce the forfeiture to \$4,000.¹³ We deny, however, Mr. Millwood's request for cancellation of the forfeiture because the reduced forfeiture amount would not serve as a financial hardship in view of Mr. Willwood's documented gross income. In addition, Mr. Millwood also has not provided any other basis that would serve to justify cancellation of the forfeiture. We caution Mr. Millwood that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.¹⁴ We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.¹⁵ Therefore, future violations of this kind may result in significantly higher forfeitures that may not be reduced due to Mr. Millwood's financial circumstances.

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ See *NAL*, *supra* note 2.

⁹ 47 U.S.C. § 301.

¹⁰ See *NAL*, 26 FCC Rcd at 6776, para. 8.

¹¹ See *NAL* Response, *supra* note 3.

¹² See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹³ This forfeiture amount falls within the percentage range that the Commission has previously found acceptable. See *supra* note 10.

¹⁴ See 47 U.S.C. § 503(b)(2)(E) (requiring the Commission to take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require).

¹⁵ *Whisler Fleurinor*, Forfeiture Order, DA 13-175 (Enf. Bur. rel. Feb. 8, 2013) (finding that violator's demonstrated inability to pay was outweighed by repeated operation of an unlicensed radio station); *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweigh evidence concerning his ability to pay); *Hodson Broadcasting Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures).

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's rules, Recardo Millwood **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for violations of Section 301 of the Act.¹⁶

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.¹⁷ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹⁸ Recardo Millwood shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

8. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁰ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

¹⁶ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4).

¹⁷ 47 C.F.R. § 1.80.

¹⁸ 47 U.S.C. § 504(a).

¹⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁰ See 47 C.F.R. § 1.1914.

9. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Recardo Millwood at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director
Northeast Region
Enforcement Bureau